THE HON'BLE Mr. JUSTICE N.V. RAMANA

Writ Petition No.6782 of 1997

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Dated: February 02, 2006

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Between:

P. Samson Charles, S/o. P. Charles,

aged 43 years, Occ: Conductor in

APSRTC, R/o. Ramnagar, Hyderabad.

… Petitioner

And

The Executive Director (HZ)

APSRTC I.B.S., Hyderabad, and another

… Respondents

Order:

Petitioner seeks Mandamus declaring the action of

Respondent No.2 in levying exorbitant penal interest through his order No.P8/9(68) 90, BR, dated 06-09-1993 and deducting ninety percent of his wages, as illegal, arbitrary, unconstitutional and against the principles of natural justice and for a consequential direction to the respondents to repay the exorbitant amount deducted from his salary.

2. Petitioner, a Conductor in the respondent-Corporation states that a housing loan scheme was introduced by the corporation for its employees to construct or to purchase an already existing house, wherein the said loan sanctioned was proposed to be deducted in monthly installments not exceeding 180 months, in all, with an interest rate of 8.5% per annum. It is the case of the petitioner that he had applied for a loan of Rs.1,00,000/- and the same was sanctioned after verification of documents. It is stated that the first phase loan amount of Rs.30,000/- was released on 01-10-1992 and thereafter, the petitioner is said to have paid the same to a house builder, who organized an inaugural function and took up some developmental work, and thereafter, the work was stalled. When the petitioner, along with his colleagues, questioned about the stoppage of work, he assured them that he would finish the work in time, but he failed to complete the work in time. Thereafter, petitioner is said to have informed the same to the corporation, which, after completion of the first phase of work, sanctioned the other two phases of loans to the petitioner. While things stood thus, Respondent No.2, by his order dated 06-09-1993, declared that the first installment of Rs.30,000/- sanctioned to the petitioner was misused, hence, there would not be any further sanction of loan to him. He also levied penal interest of 19% on the amount of Rs.30,000/-, resulting in an amount of Rs.58,975/- and the same was divided into 50 equal installments, recoverable from the petitioner's salary at the rate of Rs.1,179-50 Ps. Petitioner alleges that a strange situation arose wherein Rs.600/- was deducted from his salary every month from the amount of Rs.70,000/-, which was released as second and third phase of loan, apart from Rs.1,179-50 Ps. It is stated that the petitioner is said to have made an appeal to Respondent No.1, by letter dated 22-05-1996, which was dismissed by order dated 16-12-1996. Hence, the petitioner filed the present writ petition.

3. The learned counsel for the petitioner mainly contends that the petitioner has not misused any amount, as alleged by the respondent, but due to some unavoidable problems, there was delay in starting the construction work. Later on, the work was also completed with the amount sanctioned by the respondents. Hence, he prayed to allow the writ petition.

4. Respondents filed counter affidavit stating that the petitioner submitted an application dated 16-04-1993 stating that due to unavoidable problems, he could not start the construction, and requested that he may not be imposed penal interest of 19% p.a. and he also submitted another application dated 22-05-1993 stating that he had completed construction upto basement level and requested to release the second installment. Thereafter, an order was issued on 06-09-1993 ordering to recover the first installment amount of Rs.30,000/- with penal interest @ 19% p.a. in 50 installments @ Rs.1179.50 Ps. because the petitioner failed to utilize the total loan amount within 6 months as per the terms and conditions of the memorandum. In response to the same, the petitioner had informed that he had completed

construction upto basement level and requested to set aside the order and to release the second installment.

5. It is further stated that in order to ascertain the facts, the Executive Engineer and Senior Manager (P) inspected the petitioner's site on 25-10-1993, and certified that though the petitioner has laid the basement, the cost of work done was only Rs.13,021/-. Thereafter, petitioner is said to have made a representation dated 03-01-1994 requesting that after the inspection of the EE (M) and Sr. Manager (P), he has completed the construction upto lintel level and requested to release the second installment, who inspected the site and certified that the construction upto roof level was completed. Thereafter, second installment of Rs.30,000/- was released on 18-02-1994 to enable the petitioner to complete the construction. After completion of the construction upto roof level, an amount of Rs.40,000/-, being the third installment was released to the petitioner on 25-08-1994 with instruction to recover the loan amount with 19% penal interest, since he misused the first installment, and did not make construction as per the instructions. Later, his representation dated 31-07-1995 against the proposed recoveries, was examined and rejected, as that was a clear case of misuse of loan.

6. Learned Standing Counsel for the respondent placed before this Court a copy of Circular No.PD-41/95 dated 12-06-1995. Clause 6.2 of the said Circular reads as under. -

> " In case where a part of loan is released and employee does not avail further installments, sanction of loan should be deemed to have been lapsed and the amount already released shall be recovered with a penal interest of 19%."

7. In the present case, all the installments were utilized by the petitioner for construction of the house. According to the said clause, no penal interest can be levied if the petitioner avails the amount of the loan for construction of the house. The construction of the house is admittedly completed. Hence, there is no justification on the part of the respondent in imposing penal interest @ 19% on the loan availed by the petitioner.

8. In the result, the writ petition is allowed setting aside the impugned order. The respondents are directed to recover the amount from the petitioner as per the rate of interest as agreed in the loan agreement.

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N.V. RAMANA, J.

February 02, 2006

MRR